*road Co.*, 24 Mo. App. 199, it was held that the statute in regard to covenants is binding, while *Foster* v. *Atwater*, 42 Conn. 244; *Fowler* v. *Smith*, 2 Cal. 39, and *Trustees* v. *Spencer*, 7 Ohio 149, hold that the statute as regards simple contracts was controlling. The question cannot arise in those states where all distinction between sealed and unsealed instruments has been abolished by statute, except in case of corporate seals. *Dyer* v. *Gill*, 32 Ark. 410; *Ortman* v. *Dixon*, 13 Cal. 34; *Edwards* v. *Dillon*, 147 Ill. 14, 35 N. E. 135. Further see 6 MICH. L. REV. 418.

MUNICIPAL CORPORATIONS—DEFECT IN STREET—INJURIES—QUESTION FOR JURY.—Plaintiff alleged injuries sustained by reason of being thrown from his bicycle while riding on a street of the defendant city, which street he alleged was in an unsafe condition for travel because of an excavation which was negligently permitted to be and remain therein. The following instruction was given. "You are instructed that a person riding a bicycle upon a street of Salt Lake City, being at a greater disadvantage with respect to obstructions,, than a traveller by team or machine, should use a degree of care equal to the risk, to-wit, ordinary care as defined in these instructions, and as a matter of ordinary care and prudence should observe the path or way being travelled, with a view to detect and avoid, if possible, any obstructions that would make it unsafe for a bicycle rider." *Held*, prejudicial to plaintiff's rights and erroneous. *Bills* v. *Salt Lake City* (1910), — Utah —, 109 Pac. 745.

The law in this country in regard to the care necessary to be exercised by a traveller on a public street is set forth in the case of *Pettengill* v. *City of Yonkers*, 116 N. Y. 558, 22 N. E. 1096, where it is stated: A person using a public street has no reason to apprehend danger, and is not required to be vigilant to discover dangerous obstructions, but he may walk or drive in the daytime or night time, relying upon the assumption that the corporation whose duty it is to keep the streets in a safe condition for travel has performed that duty, and that he is exposed to no danger from its neglect. As authority for this rule see also *Osborne* v. *City of Detriot*, (C. C.) 32 Fed. 36; *City of Chicago* v. *McLean*, 133 Ill. 148, 24 N. E. 527, 8 L. R. A. 765; *Anderson* v. *City of Wilmington*, 2 Pennewill 28, 43 Atl. 841; *City of Nokomis* v. *Salter*, 61 Ill. App. 150; *Sherman* v. *Village of Oneonta*, 66 Hun 629, 21 N. Y. Supp. 137. It is possible that the District Court Judge in giving the instruction here criticized may have been influenced by the general tenor of those cases holding that a municipality is not liable for damages arising from injuries to bicycle riders or to persons driving automobiles where the injuries resulted from defects in the highway not ordinarily dangerous to persons travelling by foot or by team, carriage or vehicle ejusdem generis. *Richardson* v. *Inhabitants of Danvers*, 176 Mass. 413, 57 N. E. Rep. 688, 50 L. R. A. 127, 79 Am. St. Rep. 320; *Baker* v. *Fall River*, 187 Mass. 53, 72 N. E. 336. See also 6 MICH. L. REV. 568, for a collection of cases and discussion of this subject. While the law at the present time in regard to damages suffered through accidents to bicyclists and those driving automobiles occasioned by reason of imperfections in highways and streets, is un-

doubtedly that a recovery can only be had when the imperfection is of such a nature as to make the highway unsafe for travel by the ordinary modes of conveyance, yet it is an unwarrantable inference for a court to deduce from this rule and incorporate the deduction thus arrived at in a charge to the jury that bicyclists are therefore required to exercise a greater degree of care in detecting and avoiding obstructions in a public road or highway than persons travelling by means of other conveyances. This function rests purely in the province of the jury.

MUNICIPAL CORPORATIONS—TAXES—LICENSE TAXES—PARTIAL INVALIDITY OF ORDINANCE.—Acting under the authorization of Sec. 1, Art. 5, c. 24, Hurd's Rev. Statutes 1909, the city council of Chicago passed an ordinance which classified theaters into five classes and fixed an annual license fee for each, based on the price of admission, exclusive of that charged for box seats. The plaintiffs as owners and operators of various theaters in the city of Chicago, filed their bill praying for an injunction against the enforcement of the above ordinance. A demurrer by the defendant being overruled it elected to stand thereon, and a decree was entered perpetually enjoining the enforcement of § 104 of the ordinance in question. On appeal by the city, *Held,* that the ordinance was valid as imposing a tax for revenue, even if unreasonable as imposing a tax for regulation. *Metropolis Theater Co. et al.* v. *City of Chicago* (1910), — Ill. —, 92 N. E. 597.

The question before the court was as to the validity of that section which classified the theaters on a basis of the admission charged. Since the statute under the authorization of which the ordinance was passed gives the city in clear and explicit terms the power to "license, tax, regulate, suppress and prohibit—theatricals and other exhibitions," it follows that the city has all the power so to do that the legislature would have, which body is subject only to the limitations found in the State Constitution. The State Constitution is moreover supreme in its sphere. The only limitation found in the Illinois Constitution upon the power of the legislature to tax occupations is that the tax shall be "uniform as to the class upon which it operates." An occupation tax in the purview of the United States Supreme Court is not a direct tax but is in the nature of an excise or duty, and if levied uniformly fulfills the requirements of the National Constitution. (Justice FIELD in the *License Tax Cases*). The question arises therefore as to whether a taxing power thus validly given carries with it the power to classify the objects of the tax without destroying uniformity of assessment. This question is an old one and has been decided repeatedly in the affirmative. *Knowlton* v. *Moore,* 178 U. S. 41; *Douglas* v. *People,* 225 Ill. 536, 80 N. E. 341, 8 L. R. A. (N. S.) 1116, 116 Am. St. Rep. 162; *Ould and Carrington* v. *City of Richmond,* 23 Grat. 464. It is agreed that the classification must not be made arbitrarily, but necessarily there must be great freedom of discretion even though it result in ill-advised, unequal, and oppressive legislation, *Heath* v. *Worst,* 207 U. S. 338, 28 Sup. Ct. 114, 52 L. Ed. 236. Exact justice and equality are not attainable, however, and consequently not required; COOLEY, CONT. LIM., Ed. 7, p. 738, *Slaughter* v. *Commonwealth,* 13 Grat.